

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

RYAN BATEMAN,

Plaintiff

v.

HAWKER ENERGY, INC., et al.,

Defendants

Case No.: 2:20-cv-02049-APG-NJK

**Order (1) Granting Motion to Dismiss,  
(2) Striking Amended Complaint, and  
(3) Granting Leave to Amend**

[ECF Nos. 11, 21]

On March 10, 2021, the defendants filed a motion to dismiss the complaint. ECF No. 11. Plaintiff Ryan Bateman did not file an opposition. Local Rule 7-2(d) states: “The failure of an opposing party to file points and authorities in response to any motion . . . constitutes a consent to the granting of the motion.” I will grant the motion to dismiss as unopposed.

On April 21, 2021, Bateman filed a first amended complaint. ECF No. 21. Federal Rule of Civil Procedure 15(a)(1)(B) allows a party to file an amended complaint “as a matter of course within . . . 21 days after service of a motion under Rule 12(b) . . . .” Otherwise, the party must obtain the consent of the other parties or the court. Fed. R. Civ. P. 15(a)(2). Bateman filed his first amended complaint 41 days after the defendants’ motion was filed, and he has not moved for permission under 15(a)(2). The amended complaint is therefore untimely so I will strike it. However, Bateman may be able to properly plead a claim against some or all of the defendants. I therefore will grant Bateman leave to file a new amended complaint if he can assert sufficient facts to overcome the deficiencies pointed out in the defendants’ motion to dismiss.

I THEREFORE ORDER that the defendants’ motion to dismiss (**ECF No. 11**) is **GRANTED**.

1 I FURTHER ORDER that the plaintiff's first amended complaint (**ECF No. 21**) is  
2 **STRICKEN.**

3 I FURTHER ORDER that the plaintiff may file a new amended complaint if he can assert  
4 sufficient facts to overcome the deficiencies pointed out in the defendants' motion to dismiss.  
5 The plaintiff may file that amended complaint by **May 28, 2021**. If he does not, this case will be  
6 dismissed and the file closed.

7 DATED this 22nd day of April, 2021.

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ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE